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Ocean Commissions: Ocean Policy Review and Outlook

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John Justus, Eugene H. Buck, Jeffrey Zinn, and Wayne Morrissey
Resources, Science, and Industry Division

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Ocean Commissions: Ocean Policy Review and Outlook

SUMMARY

The Marine Resources and Engineering Development Act of 1966 (P.L. 89-454) stated U.S. marine policy objectives, created a National Council on Marine Resources and Engineering Development, and set up a presidential Commission on Marine Science, Engineering, and Resources (called the Stratton Commission after its chairman, Dr. Julius Stratton). The commission's 1969 final report, *Our Nation and the Sea: A Plan for National Action*, contained recommendations that led to reorganizing federal ocean programs by establishing the National Oceanic and Atmospheric Administration (NOAA), beginning new ocean programs, and strengthening existing ones.

By the late 1980s, however, 20 years after the Stratton Commission, a number of influential voices among the executive, congressional, and public sectors had concluded that ocean management by the United States was fragmented and characterized by a confusing array of laws, regulations, and practices at the federal, state, and local levels. Moreover, it seemed that various agencies charged with implementing and enforcing legal regimes had mandates that often conflicted, with no mechanism for establishing a common vision and objectives. Support coalesced around the need for a congressional mandate to establish a National Oceans Policy Commission, sometimes called a Stratton II Commission, guided by four principles: sustaining the economic benefits of the oceans; strengthening global security; exploring and understanding the oceans; and preserving and protecting ocean resources while encouraging their enlightened use. Legislation creating such a commission was considered in the 98th, 99th, 100th, and 105th Congresses, but it was not until the 106th Congress in 2000 that legislation was finally enacted to establish a

U.S. Commission on Ocean Policy (P.L. 106-256). Earlier in 2000, the Pew Oceans Commission, an independent group, was established and funded by the Pew Charitable Trusts to conduct a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters. After several years of work, the Pew Commission released its final report in June 2003, *America's Living Oceans: Charting a Course for Sea Change*, outlining a national agenda for protecting and restoring our oceans.

The U.S. Commission on Ocean Policy convened its inaugural meeting in September 2001, and established a Science Advisory Panel plus four working groups to address issues in the areas of governance; research, education, and marine operations; stewardship; and investment and implementation. After hearing from 440 presenters in 10 cities over 11 months, the U.S. Commission published its final report in two stages. First, in April 2004, the commission released a *Preliminary Report* for review and comment by the nation's governors and interested stakeholders. Stage two began when the public comment period closed June 4, 2004, and the commission commenced reviewing the comments received from the governors and others. On July 22, 2004, the commission approved changes to its *Preliminary Report* and directed staff to prepare the final report, officially titled *An Ocean Blueprint for the 21st Century*. That report, with its recommendations on a coordinated and comprehensive national ocean policy, was delivered to the President and Congress on September 20, 2004. On December 17, 2004, the President submitted to Congress the *U.S. Ocean Action Plan*, his formal response to the recommendations of the U.S. Commission on Ocean Policy.

MOST RECENT DEVELOPMENTS

The Pew Oceans Commission was established and funded by the Pew Charitable Trusts to conduct a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters. In June 2003, the Pew Commission released its final report, *America's Living Oceans: Charting a Course for Sea Change*, outlining a national agenda for protecting and restoring our oceans.

The U.S. Commission on Ocean Policy published its final report in two stages. First, in April 2004, the commission released a *Preliminary Report*, available for review and comment by the nation's governors and interested stakeholders. Stage two commenced when the public comment period closed on June 4 and the commission began reviewing those comments. In its last public meeting on July 22, 2004, the U.S. Commission on Ocean Policy approved changes to its *Preliminary Report* and directed staff to prepare the final report, bearing the official title *An Ocean Blueprint for the 21st Century*. That report, with its recommendations on a coordinated and comprehensive national ocean policy, was delivered to the President and Congress on September 20, 2004, in ceremonies at the White House and on Capitol Hill. The new policy addresses a broad range of issues, from ocean governance to the stewardship of marine resources, and from pollution prevention to enhancing and supporting marine science, commerce, and transportation.

On December 17, 2004, the President submitted to Congress the *U.S. Ocean Action Plan*, his formal response to the recommendations of the U.S. Commission on Ocean Policy. The President was required by the Oceans Act of 2000 (P.L. 106-256) to respond to the commission's final report within 120 days.

BACKGROUND AND ANALYSIS

Congress has shown particular interest in ocean affairs in recent decades, examining in detail components of the federal ocean programs, enacting legislation creating new ocean programs, and taking steps to define a national ocean policy. The Marine Resources and Engineering Development Act of 1966 (P.L. 89-454) set up a National Council on Marine Resources and Engineering Development in the White House and initiated work by a presidential bipartisan Commission on Marine Science, Engineering, and Resources. Dr. Julius Stratton, then recently retired president of the Massachusetts Institute of Technology and, at the time, Chairman of the Board of the Ford Foundation, was appointed chairman of the commission by President Lyndon Johnson. The commission, composed of 15 members, was often referred to as the Stratton Commission. In 1969, the commission completed its final report, *Our Nation and the Sea: A Plan for National Action*, and its more than 120 formal recommendations provided what many consider to be the most comprehensive statement of federal policy for exploration of, and development of, resources from the ocean. The study and its contents were instrumental in defining the structure, if not all the substance, of what a national ocean policy could or should look like. Furthermore, new ocean-oriented programs were initiated and existing ones were strengthened in the years following the commission's report, through a number of laws enacted by Congress.

Recommendations of the Stratton Commission led directly, within the following decade, to forming the National Sea Grant College Program and creating the National Advisory Committee on Oceans and Atmosphere (NACOA) and to reorganizing federal ocean programs under the newly established National Oceanic and Atmospheric Administration (NOAA). Subsequent legislation on estuarine reserves, national marine sanctuaries, marine mammal protection, coastal zone management, fishery conservation and management, ocean pollution, and seabed mining also reflected commission recommendations. Efforts sprang up within the federal government and among various interagency committees and federal advisory committees to flesh out how best to implement a truly comprehensive and forward-looking national ocean policy, most notably articulated in the 1978 Department of Commerce report *U.S. Ocean Policy in the 1970s: Status and Issues*.¹

Since 1980, with concerns about limiting federal expenditures and streamlining of government, there have been fewer ocean initiatives, and a number of ocean programs, particularly those of NOAA, have been consolidated and reduced; however, the programs begun in the 1970s generally have been reauthorized and have been able to mature. By the late 1980s, some 20 years after the Stratton Commission and in a climate created by those successive periods of expansion and relative stability, there appeared to be a broad consensus among those conversant in ocean affairs that a need existed to redefine or, at the very least, better define national ocean policy. Two stimuli for this renewed interest were the 1983 proclamation by President Reagan establishing a 200-nautical-mile U.S. Exclusive Economic Zone (EEZ) and the 1988 extension of the U.S. territorial sea from 3 to 12 nautical miles, both of which came in the aftermath of the President's decision that the United States would not sign the Convention on the Law of the Sea.

Legislation creating an oceans commission and/or a national ocean council to review U.S. ocean policy was introduced and hearings were held in the 98th, 99th, 100th, and 105th Congresses. In fact, legislation did indeed pass the House in October 1983, September 1987, and again in October 1988, but was not acted on by the Senate in any of those instances. In the 105th Congress, legislation creating both a national ocean council and a commission on ocean policy passed the Senate in November of 1997, and in 1998 the House passed a bill creating just a commission on ocean policy. Congress adjourned in 1998, however, before differences could be reconciled and a bill enacted. It was not until the 106th Congress in 2000 that legislation was finally enacted to establish a 16-member U.S. Commission on Ocean Policy (P.L. 106-256). That enactment rode a crest of interest generated largely by a National Ocean Conference convened by the White House in June 1998, in Monterey, CA, and attended by President Clinton and Vice President Gore,² and capitalized on a proactive spirit surrounding the declaration by the United Nations of 1998 as the International Year of the Ocean.³ Momentum was facilitated with the September 1999 release of a post-Monterey

¹ U.S. Dept. of Commerce, *U.S. Ocean Policy in the 1970s: Status and Issues* (Washington, DC: GPO, 1978), 334 pp.

² U.S. Dept. of Commerce and Dept. of the Navy, *Oceans of Commerce ... Oceans of Life*, Proceedings of the National Ocean Conference, June 11-12, 1998, Monterey, CA (Washington, DC: NOAA, 1998), vi + 241 pp.

³ The International Year of the Ocean was proclaimed by the U.N. General Assembly on Dec. 19, 1994, in resolution A/RES/49/131, *Question of Declaring 1998 International Year of the Ocean*, at (continued...)

conference report, ordered by the President and prepared by members of his Cabinet, entitled *Turning to the Sea: America's Ocean Future*, in which recommendations were offered for a coordinated, disciplined, long-term federal ocean policy.⁴

Also in 2000, partially in response to that rekindled interest, and partially in response to congressional legislation having failed final passage in 1998, the Pew Charitable Trusts established the Pew Oceans Commission, an independent group of 18 American experts in their respective fields of endeavor. The Pew Commission's charge was to conduct a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters. Pew interests had forged ahead with their effort after an unsuccessful attempt to gain support among key Members of Congress to introduce legislation that would have established a public/private, non-governmental oceans commission.

U.S. Commission on Ocean Policy

The Oceans Act of 2000 (P.L. 106-256) mandated a U.S. Commission on Ocean Policy. Appointed by the President, the commission was required to issue findings and make recommendations to the President and Congress for a coordinated and comprehensive national ocean policy. The new policy was to address a broad range of issues, from the stewardship of marine resources and pollution prevention to enhancing and supporting marine science, commerce, and transportation. The full scope, stated in §3(f)(2) of the Oceans Act, is:

- (A) An assessment of existing and planned facilities associated with ocean and coastal activities, including human resources, vessels, computers, satellites, and other appropriate platforms and technologies;
- (B) A review of existing and planned ocean and coastal activities of federal entities, recommendations for changes in such activities to improve efficiency and effectiveness and to reduce duplication of federal efforts;
- (C) A review of the cumulative effect of federal laws and regulations on U.S. ocean and coastal activities and resources, an examination of those laws and regulations for inconsistencies and contradictions that might harm those ocean and coastal activities and resources, a review of conflicts with state ocean and coastal management regimes, and recommendations for resolving such inconsistencies to the extent practicable;
- (D) A review of the known and anticipated supply of, and demand for, ocean and coastal resources of the United States;
- (E) A review of and recommendations concerning the relationship between federal, state, and local governments and the private sector in planning and carrying out ocean and coastal activities;
- (F) A review of opportunities for developing or investing in new products, technologies, or markets related to ocean and coastal activities;
- (G) A review of previous and ongoing state and federal efforts to enhance the effectiveness and integration of ocean and coastal activities;

³ (...continued)

the initiative of the Intergovernmental Oceanographic Commission (IOC) of the U.N. Educational, Scientific and Cultural Organization (UNESCO).

⁴ U.S. Dept. of Commerce and Dept. of the Navy, *Turning to the Sea: America's Ocean Future* (Washington, DC: NOAA, 1999), 64 p.

- (H) Recommendations for any modifications to U.S. laws, regulations, and the administrative structure of Executive agencies necessary to improve the understanding, management, conservation, use of, and access to ocean and coastal resources; and
- (I) A review of the effectiveness and adequacy of existing federal interagency ocean policy coordination mechanisms, and recommendations for changing or improving the effectiveness of such mechanisms necessary to respond to or implement the recommendations of the commission.

The 16 appointments to the commission by President Bush were finalized on July 3, 2001. Those appointments were based on a process that included nominations by the Congress and appointment by the President.

The commission convened its inaugural meeting on September 17-18, 2001, in Washington, DC, and commissioners selected Admiral James D. Watkins, U.S. Navy (Retired) as chairman. Through several sessions the commission established four working groups to address issues in the areas of governance; research, education, and marine operations; stewardship; and investment and implementation. The working groups were charged with reviewing and analyzing issues within their specific areas of focus and reporting their findings to the full commission.

The Oceans Act of 2000 specifically directed the commission to establish a Science Advisory Panel to assist in preparing the report and to ensure that the scientific information considered by the commission and used by each of the working groups was based on the best scientific information available. The composition of the Science Advisory Panel was determined by the commissioners; members were recruited in consultation with the Ocean Studies Board of the National Research Council at the National Academy of Sciences and reflected the breadth of issues before the commission. The commission agreed that the Science Advisory Panel members would be divided into four working groups consistent with the full commission's working group structure.

The commission began its work by launching a series of public meetings to gather information and hear about the most pressing issues that the nation faced regarding the use and stewardship of the oceans. The working groups played a vital role in maximizing the effectiveness of the regional public meetings and identifying key issues to be addressed by the commission. Group members ensured that, in each region visited, the commission heard presentations on a balanced and wide-ranging set of topics and elicited information necessary to ultimately address the requirements put forth in the Oceans Act of 2000. Based on the information gathered at the public meetings, the working groups identified and reviewed key issues, outlined possible options for addressing those issues, and determined the need for white papers to provide more detailed information on specific topics. The deliberations of each working group were shared with the other groups throughout the process to ensure thorough integration and coordination in developing the final commission report and recommendations.

After hearing from 440 presenters at 15 public meetings in 10 cities over 11 months and conducting 17 additional site visits around the country, the commission completed its information-gathering phase in October 2002. The commission entered its deliberative phase in November 2002, and the last meeting dedicated to open public discussion of policy

options — the fifteenth and final public commission meeting — was held April 2-3, 2003, in Washington, DC.

Reports and Working Documents. Supporting documents, working papers, and publications either produced for or generated by the commission include:

- *Draft Policy Option Documents.* At its meeting on November 22, 2002, the commission made the transition from fact-finding to deliberation with its first public discussion of a document entitled *Draft Policy Options*. The issues were organized and presented within the framework of the commission's new *Draft Table of Contents Document*, which also was made available at the meeting. Progressive and revised versions of both the *Draft Policy Options Documents* and the *Draft Table of Contents Document* were prepared and distributed at successive commission meetings on January 24, 2003, and on April 2-3, 2003.
- *Working Table of Contents.* In May 2003, the commission posted the initial framework for its draft final report in a *Working Table of Contents*. This document has evolved based on ongoing analyses, discussions, deliberations, writing, and editing.
- *Synthesis and Summary of Testimony.* Two documents were completed in June 2003. *A Synthesis of Testimony Organized by Policy Topic* highlights the presentations made to the commission at its public meetings held from September 2001 through November 2002. *A Summary of Testimony Indexed by Presenter* includes overviews of invited testimony and public comment before the commission at those same public meetings.
- *Governing the Oceans.* This document was prepared by the Sea Grant Law Center, University of Mississippi, for use by the commission members and staff as a reference during their work collecting and analyzing information about the nation's oceans and coasts. It contains a Cumulative List of Statutes, Summaries of Other Relevant Laws, International Materials, and Resources (including acronyms and internet sites).
- *Developing a National Ocean Policy: Midterm Report of the U.S. Commission on Ocean Policy.* This September 2002 report describes the commission's activities, plans, and some preliminary observations as the commission moved to complete its fact-finding phase.
- *Toward a National Ocean Policy: Ocean Policy Topics and Related Issues Document (Working Draft for Public Comment).* This July 2002 paper was designed to present both the scope and the content of a potential national ocean policy. Specifically, the commission was interested in whether or not the topics and questions outlined in this document captured the key issue areas for policy options that should be addressed by the commission, as required by the Oceans Act of 2000.

- *Elements Document*. Entitled *Developing a National Policy for Our Ocean Future* and released in April 2002, the *Elements Document*, as it came to be known, contained the broad ocean policy elements that the commission identified as essential to a sound national ocean policy. This document would serve as a framework for the commission's inquiry and eventual development of recommendations.
- *Law of the Sea Resolution*. Passed unanimously by the members of the commission at their meeting in Washington, D.C., on November 14, 2001, the resolution recommended that the United States immediately accede to the U.N. Convention on the Law of the Sea.

All of the documents listed above are available in pdf format on the commission's website at [<http://www.oceancommission.gov/documents/welcome.html>].

Delivery of the Commission Report. The commission published its final report in two stages. First, on April 20, 2004, the commission released a *Preliminary Report*, which was available for a 30-day period of review and comment by the nation's governors and interested stakeholders. That *Preliminary Report* was built on information presented at the public meetings and site visits, combined with the latest scientific and technical information on oceans and coasts and input from hundreds of experts. Although the *Preliminary Report* was a work in progress, its findings and policy recommendations reflected a consensus of commission members and presented what the commissioners believed to be a balanced approach to protecting the ocean environment while sustaining the vital role oceans and coasts play in the national economy.⁵ On May 14, 2004, the commission announced that it had extended the closing date for public comment on the *Preliminary Report* to June 4, 2004. The extension applied to governors and all other stakeholders.

Stage two commenced when the public comment period closed on June 4 and the commission began reviewing the comments received and modifying the report in response to gubernatorial or stakeholder input. At its 16th public meeting on July 22, 2004, the U.S. Commission on Ocean Policy approved changes to its *Preliminary Report* and directed staff to prepare the final report, bearing the official title *An Ocean Blueprint for the 21st Century*. That report, with its recommendations on a coordinated and comprehensive national ocean policy, was delivered to the President and Congress on September 20, 2004, in ceremonies at the White House and on Capitol Hill.

Summary of Commission Recommendations. The commission presented 212 recommendations throughout *An Ocean Blueprint*; however, thirteen "critical" actions recommended by the commission can be summarized as follows:

1. Establish a National Ocean Council in the Executive Office of the President, chaired by an Assistant to the President.
2. Create a President's Council of Advisors on Ocean Policy.

⁵ The U.S. Commission on Ocean Policy's preliminary report, *Preliminary Report of the U.S. Commission on Ocean Policy*, was available at [<http://oceancommission.gov/documents/prelim-report/welcome.html>] on April 27, 2004.

3. Strengthen NOAA and improve the federal agency structure.
4. Develop a flexible and voluntary process for creating regional ocean councils, facilitated and supported by the National Ocean Council.
5. Double the nation's investment in ocean research.
6. Implement the national Integrated Ocean Observing System.⁶
7. Increase attention to ocean education through coordinated and effective formal and informal programs.
8. Strengthen the link between coastal and watershed management.
9. Create a coordinated management regime for federal waters.
10. Create measurable water pollution reduction goals, particularly for nonpoint sources, and strengthen incentives, technical assistance, and other management tools to reach those goals.
11. Reform fisheries management by separating assessment and allocation, improving the Regional Fishery Management Council system, and exploring the use of dedicated access privileges.
12. Accede to the United Nations Convention on the Law of the Sea.
13. Establish an Ocean Policy Trust Fund based on revenue from offshore oil and gas development and other new and emerging offshore uses to pay for implementing the recommendations.

Changes Contained in the Final Report. At its 16th public meeting on July 22, 2004, the commission unanimously approved a number of modifications to recommendations and text in the commission's *Preliminary Report*, which were carried through to the final report, *An Ocean Blueprint*. There is, however, no change in the thirteen critical actions listed above. Those modifications derived from comments totaling more than 600 pages from 37 governors and five tribal leaders, over 800 public commenters, stakeholders and other experts and advisers, as well as technical corrections provided from federal agencies. A detailed summary of specific changes appearing in *An Ocean Blueprint* are available on the commission's website.⁷ Changes of an overall general nature now in the final report include the following:

- The report was revised to further emphasize the important role of states, and to clarify that the Commission favors a balanced, not a "top down" approach of shared responsibility to ocean and coastal issues.
- The report clarifies the Commission's intent to embrace all coastal areas and decision makers, including the Great Lakes, U.S. territories, and tribes.
- Many sections of the report were revised to address the issue of climate change and its impacts on the oceans and coasts.
- The importance of cultural heritage in connection with the ocean was more fully recognized and addressed.

⁶ An integrated regional system including (1) raw measurements of oceanographic parameters, with data assembled and checked for quality; (2) data management and communications involving a system of standards and protocols to allow a wide variety of data to be located, integrated, and archived; and (3) data analysis and incorporation into models of environmental behavior.

⁷ [http://www.oceancommission.gov/documents/prelim_report_changes.pdf].

- Discussions about the funding needed to implement recommendations were consolidated into an expanded Chapter 30 (“Funding Needs and Possible Sources”).

Comments on the U.S. Commission’s Work. The Governors’ and Tribal Leaders’ comments on the Commission’s *Preliminary Report* were generally favorable. Most of the 42 respondents (37 governors and 5 tribal leaders) highlighted the report’s comprehensive treatment of ocean and coastal issues, the economic importance of oceans and coasts, and the need to take immediate action to protect and enhance the health of these resources. Their primary concerns related to funding issues; the participation of states, territories, and tribes in national policy development; and the need for flexibility in the implementation of such policies.⁸

Public comments were received from private citizens (including school children), non-governmental organizations, trade associations, governmental and quasi-governmental organizations (e.g., regional fishery management councils), academicians, scientists, and lawyers. The vast majority of public commenters thanked the Commission for its hard work, praised the report as comprehensive and balanced, and voiced their support for implementation of the recommendations. Although many were supportive of the report’s major themes and recommendations, a significant number of commenters highlighted areas of particular concern, including national and regional governance, federal organization, offshore management regimes, funding for science and research and for implementation of Commission recommendations, ecosystem based management, regulation and enforcement, and living marine resources. Furthermore, there were numerous additional comments on a suite of issues, including cruise ships, climate change, atmospheric deposition, invasive species, bottom-trawling, bycatch, wind energy, coastal development, international ocean policy, and seafood safety.⁹

Soon after the release of the commission’s preliminary report, individual Members of Congress commented on the report and its recommendations.¹⁰ Some Members identified recommendations, such as the transfer of NASA earth satellites to NOAA,¹¹ for specific criticism. Meanwhile, members of the commission and participants in its advisory process generally spoke favorably of its recommendations.¹² Articles and editorials in regional media generally focused on selected issues of local relevance,¹³ and interest groups highlighted

⁸ A general summary of comments submitted by the governors and tribal leaders on the *Preliminary Report* is available online at the Commission’s website, [http://www.oceancommission.gov/newsnotices/summary_govcomments.pdf]. The full text of their comments is also available online at [http://www.oceancommission.gov/documents/gov_comments/welcome.html].

⁹ A two-page summary of the public comments is available online at the Commission’s website [http://www.oceancommission.gov/newsnotices/summary_publiccomments.pdf].

¹⁰ For example, see [http://cantwell.senate.gov/news/releases/2004_04_20_oceans.html], visited on July 7, 2004.

¹¹ For example, see [<http://www.seaflow.org/article.php?id=179>], visited on July 7, 2004.

¹² For example, see [<http://www.ocean.udel.edu/newscenter/OceanQA.html>], viewed on July 7, 2004.

¹³ Greg C. Bruno, “Sea Change for State: National Ocean Report Could Have Big Impact on (continued...) ”

specific issues.¹⁴ Some states have made their comments publically available.¹⁵ Some criticism has focused on the timing of the report's release and comment period as conflicting with resource users' busiest times,¹⁶ while others criticized the report and recommendations as further contributing to excessive government control.¹⁷

Delivery of Administration Response. Within 120 days after receiving and considering the commission's report, the President was required to submit to Congress a statement of proposals to implement or respond to the commission's recommendations for a national policy on ocean and coastal resources (§4(a) of P.L. 106-256). In doing so, the President was directed to consult with state and local governments and non-federal organizations and individuals involved in ocean and coastal activities (§4(b) of P.L. 106-256).

On December 17, 2004, the President submitted to Congress *U.S. Ocean Action Plan*, his formal response to the recommendations of the U.S. Commission. The content and text of the 39-page *Action Plan* may be viewed in pdf format at [<http://ocean.ceq.gov/actionplan.pdf>]. Also on December 17, President Bush signed an executive order establishing, as a part of the Council on Environmental Quality and for administrative purposes only, a Committee on Ocean Policy. That committee would be led by the chairman of the Council on Environmental Quality. The details of the executive order may be found on the White House website at [<http://www.whitehouse.gov/news/releases/2004/12/20041217-5.html>].

The Pew Oceans Commission

The Pew Oceans Commission, an independent group of 18 American leaders, was established in April 2000 and funded by a \$5.5 million grant from the Pew Charitable Trusts to conduct a national dialogue on the policies needed to restore and protect living marine resources in U.S. waters. This commission released its final report, *America's Living Oceans: Charting a Course for Sea Change*, on June 4, 2003, outlining a national agenda for protecting and restoring our oceans.¹⁸ In addition, during this process, nine "science reports" were also prepared and released.¹⁹

¹³ (...continued)

Florida," *Gainesville Sun*, Apr. 21, 2004; Wesley Loy, "Commission Gives Props to Alaska Fisheries," *Anchorage Daily News*, Apr. 20, 2004.

¹⁴ For example, see [<http://www.boatus.com/gov/oceanpolicy/>], visited July 7, 2004.

¹⁵ For example, see those of Texas posted at [http://www.governor.state.tx.us/divisions/bpp/files/ocean_policy.pdf], visited on July 7, 2004.

¹⁶ For example, see [http://congress.org/congressorg/bio/userletter/?id=159&letter_id=93815376], visited July 7, 2004.

¹⁷ For example, see [<http://www.seaflow.org/article.php?id=179>], visited July 7, 2004.

¹⁸ The full report was available at [http://www.pewtrusts.org/pdf/env_pew_oceans_final_report.pdf] on Feb. 19, 2004.

¹⁹ The topics of the nine science reports were (1) Managing Marine Fisheries in the United States; (2) A Dialogue on America's Fisheries; (3) Socioeconomic Perspectives on Marine Fisheries in the (continued...)

Summary of Commission Recommendations. The commission's 26 recommendations, organized within six categories, can be summarized as follows:

A. Governance for Sustainable Seas

1. Enact a National Ocean Policy Act to protect, maintain, and restore the health, integrity, resilience, and productivity of our oceans.
2. Establish regional ocean ecosystem councils to develop and implement enforceable regional ocean governance plans.
3. Establish a national system of fully protected marine reserves.
4. Establish an independent national oceans agency.
5. Establish a permanent federal interagency oceans council.

B. Restoring America's Fisheries

6. Redefine the principal objective of American marine fishery policy to protect marine ecosystems.
7. Separate conservation and allocation decisions.
8. Implement ecosystem-based planning and marine zoning.
9. Regulate the use of fishing gear that is destructive to marine habitats.
10. Require bycatch monitoring and management plans as a condition of fishing.
11. Require comprehensive access and allocation planning as a condition of fishing.
12. Establish a permanent fishery conservation and management trust fund.

C. Preserving Our Coasts

13. Develop an action plan to address non-point source pollution and protect water quality on a watershed basis.
14. Identify and protect from development habitat critical for the functioning of coastal ecosystems.
15. Institute effective mechanisms at all levels of government to manage development and minimize its impact on coastal ecosystems.
16. Redirect government programs and subsidies away from harmful coastal development and toward beneficial activities, including restoration.

D. Cleaning Coastal Waters

17. Revise, strengthen, and expand pollution laws to focus on non-point source pollution.
18. Address unabated point sources of pollution, such as concentrated animal feeding operations and cruise ships.
19. Create a flexible framework to address emerging and nontraditional sources of pollution, such as invasive species and noise.
20. Strengthen control over toxic pollution.

¹⁹ (...continued)

United States; (4) Marine Reserves: A Tool for Ecosystem Management and Conservation; (5) Ecological Effects of Fishing; (6) Coastal Sprawl; (7) Marine Pollution; (8) Marine Aquaculture; and (9) Introduced Species.

E. Guiding Sustainable Marine Aquaculture

21. Implement a new national marine aquaculture policy based on sound conservation principles and standards.
22. Set a standard, and provide international leadership, for ecologically sound marine aquaculture practices.

F. Science, Education, and Funding

23. Develop and implement a comprehensive national ocean research and monitoring strategy.
24. Double funding for basic ocean science and research.
25. Improve the use of existing scientific information by creating a mechanism or institution that regularly provides independent scientific oversight of ocean and coastal management.
26. Broaden ocean education and awareness through a commitment to teach and learn about our oceans, at all levels of society.

Comments on the Pew Commission's Work. As anticipated, comments on the commission's work ranged the full gamut from dismissive to laudatory. Some were concerned that the commission's work was not objective, being overly influenced by the "environmental agenda" of the Pew Charitable Trusts as an attack on commercial seafood harvesting, while ignoring other significant issues such as the damaging effects of oil spills in the marine environment.²⁰ Representative Richard Pombo, Chairman of the House Committee on Resources, issued a press release critical of the Pew Commission report, concluding "we cannot expect such a group to issue non-biased recommendations."²¹ Praise for the report came primarily from commission members, who saw the report as a long overdue update of antiquated U.S. ocean policy, offering practical solutions to reverse declining trends.²² John Flicker, the President of the Audubon Society, referred to this report as a wake-up call to all Americans that our oceans and coastal areas are in real trouble, and providing a blueprint for action to protect ecosystems at risk.²³ It is important, however, to recognize that the Pew Commission report covered only a limited portion of the topics comprising the universe of ocean issues, compared with the U.S. Commission on Ocean Policy, which covered a much broader cross-section of issues within that universe.

Other than the House Resources Committee press release, others in Congress did not immediately react to the release of the Pew Oceans Commission report. Although the Pew report was subsequently mentioned in several congressional fora, Congress has postponed any action until the completion of the U.S. Commission on Ocean Policy's report and recommendations. It is not entirely clear exactly what influence the Pew report has had either on Congress or, for that matter, on the deliberations of the U.S. Commission on Ocean

²⁰ Nils E. Stolpe, *The Pew Commission — A Basis for National Ocean Policy?* Available at [<http://www.fishingj.org/netusa23.htm>], visited Feb. 19, 2004.

²¹ [<http://resourcescommittee.house.gov/Press/releases/2003/0604Pews.htm>], visited Feb. 19, 2004.

²² Pat White and Jane Lubchenco, "New Policies on Ocean Fishing Overdue," *The Boston Globe* (June 5, 2003), p. A19.

²³ John Flicker, "Save the Coasts, Even if Only for Our Sake," *Sun Sentinel* (June 19, 2003) p. 25A.

Policy, although it should be recognized that Pew commissioners, including chairman Leon Panetta, did testify before the U.S. Commission on several occasions.

Issues for Congress

All comments having been considered, the U.S. Commission on Ocean Policy prepared and delivered to the President and Congress, on September 20, 2004, its final report and recommendations on a coordinated and comprehensive national ocean policy. Moreover, on December 17, 2004, the President submitted to Congress *U.S. Ocean Action Plan*, his formal response to the recommendations of the U.S. Commission. Interested Members of Congress and committees of relevant jurisdiction in the House and Senate are considering and evaluating issues on several fronts. For example, what measure of legislative response, if any, is warranted by the findings and recommendations of both the U.S. Commission and the Pew Commission, and, subsequently, the Administration's *U.S. Ocean Action Plan*? If action is deemed appropriate, what should be the timing and level of that response? Moreover, what would be the fiscal implications and out-year budgetary impacts on current and future ocean programs, given the long lead times associated with planning horizons for federal agency budget submissions?

The 108th Congress postponed action on many ocean issues, in anticipation of the conclusions and recommendations in both commissions' reports. The need for congressional action is most pressing for major coastal and marine laws that have expired and are awaiting possible reauthorization. For example, the Coastal Zone Management Act of 1972 was most recently reauthorized in 1996, and the authorization for appropriations expired at the end of FY1999. Legislation to reauthorize this program has been introduced and considered in each of the past three Congresses, but the reauthorization process has never been completed because of several issues. The U.S. Commission's report adds a new reason to continue to delay until Congress can examine and possibly draw from the U.S. Commission report as the reauthorization process proceeds.

In the 109th Congress, it is anticipated that key House and Senate committees with interest and jurisdiction over ocean affairs may hold hearings on the two commission reports as well as the Administration's response and engage in studying and interpreting the contents of those reports with, perhaps, an eye toward re-examining the existing legislative and regulatory structure to identify inconsistencies, duplication, and gaps among agencies' authorities. Such oversight might reveal some immediate candidates that would benefit from the crafting of administrative and legislative solutions. The timing of those actions would then be weighed against, and opportunities assessed, vis-a-vis the ocean-related items awaiting reauthorization or other considerations on the legislative agenda.

Even before the release of the U.S. Commission's final report, however, the Bush Administration sent legislation (H.R. 4607) to the Hill in June 2004 crafting an organic act for the National Oceanic and Atmospheric Administration (NOAA), and several Members also introduced legislation for a NOAA organic act. That was a recommendation that figured prominently in both the report of the U.S. Commission and that of the Pew Commission. The House Science Subcommittee on Environment, Technology, and Standards held hearings July 15, 2004, on organic act legislation, H.R. 4546. At a markup on September 29, 2004, the subcommittee approved H.R. 4546 (as amended in the nature of the substitute) for consideration by the full House Science Committee. The House Resources Committee held

hearings on September 30, 2004, on H.R. 4368, whose approach to restructuring NOAA would entail transferring the agency to the Department of the Interior. The Senate Committee on Commerce also marked up its version of NOAA organic act legislation on September 22, 2004, favorably reporting S. 2647 (as amended) to the full Senate. In conjunction with action on a NOAA organic act, the Senate passed separate measures dealing with oceans and human health as well as ocean and coastal observing systems. All those measures died with the close of the 108th Congress; however, they, along with a number of other measures responding to commission recommendations, are expected to be reintroduced in the 109th Congress.

LEGISLATION

H.R. 50 (Ehlers). *National Oceanic and Atmospheric Administration Organic Act.* Reestablishes the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce (DOC), headed by an Under Secretary of Commerce for Oceans and Atmosphere who shall serve as the Administrator of NOAA. Introduced January 4, 2005, and referred to the House Committee on Science and the House Committee on Resources. House Science Subcommittee on Environment, Technology, and Standards voted March 15, 2005, to approve, with amendments, for full committee consideration.

S. 39 (Stevens). *National Ocean Exploration Program Act.* A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration. Introduced January 25, 2005, and referred to the Senate Committee on Commerce, Science, and Transportation. Committee on Commerce, Science, and Transportation ordered reported favorably, without amendment, March 10, 2005. Reported April 13, 2005, by Senator Stevens without amendment, S. Rept. 109-57. Placed on Senate Legislative Calendar under General Orders, April 13, 2005, Calendar No. 71.

S. 361 (Snowe). *Ocean and Coastal Observation System Act of 2005.* A bill to develop and maintain an integrated system of ocean and coastal observations for the nation's coasts, oceans, and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes. Introduced February 10, 2005, and referred to the Senate Committee on Commerce, Science, and Transportation. Committee on Commerce, Science, and Transportation ordered reported favorably, without amendment, March 10, 2005. Reported April 19, 2005, by Senator Stevens without amendment, S. Rept. 109-60. Placed on Senate Legislative Calendar under General Orders, April 19, 2005, Calendar No. 76.

S. 362 (Inouye). *Marine Debris Research Prevention and Reduction Act.* A bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-federal entities, and for other purposes. Introduced February 10, 2005, and referred to the Senate Committee on Commerce, Science, and Transportation. Committee on Commerce, Science, and Transportation ordered reported favorably, with an amendment, March 10, 2005. Reported April 13, 2005, by Senator Stevens with an

amendment, S.Rept. 109-56. Placed on Senate Legislative Calendar under General Orders, April 13, 2005, Calendar No. 70.

S. 364 (Inouye). *Ocean and Coastal Mapping Integration Act.* A bill to establish a program within the National Oceanic Atmospheric Administration to integrate federal coastal and ocean mapping activities. Introduced February 10, 2005, and referred to Senate Committee on Commerce, Science, and Transportation. Full committee consideration and markup held March 10, 2005, by Senate Commerce, Science and Transportation. Committee on Commerce, Science, and Transportation ordered reported favorably, with amendments, April 14, 2005.

S.Amdt. 259 to S.Con.Res. 18 (Boxer). *To express the sense of the Senate regarding the need for a comprehensive, coordinated, and integrated national ocean policy.* Introduced March 17, 2005. S.Amdt. 259 agreed to March 17, 2005, in the Senate by unanimous consent. S.Con.Res. 18 agreed to in Senate with amendments by yeay-nay vote, 51-49, March 17, 2005. Senate incorporated S.Con.Res. 18 into H.Con.Res. 95 as an amendment and agreed to H.Con.Res. 95 on April 4, 2005. Conference report on H.Con.Res. 95 filed April 28, 2005, H.Rept. 109-62. Conference report agreed to in the House (214-211), April 28, 2005. Conference report agreed to in Senate (52-47), April 28, 2005.

FOR ADDITIONAL READING

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Gish, Ken and Eric Laschever. "The President's Ocean Commission: Progress Toward a New Ocean Policy." *N R & E*. Summer 2004. p. 17-19, 79.

National Marine Sanctuary Foundation. *Capital Hill Oceans Week 2003, Summary Report: Exploring our Oceans, Managing our Marine Areas*. June 11-12, 2003 (Silver Spring, MD: 2003). 30 pp.

Paul, Linda M. B. "The 2003 Pew Oceans Commission Report: Law, Policy, and Governance." *N R & E*. Summer 2004. p. 10-16.

U.S. Dept. of Commerce. President's Panel on Ocean Exploration. *Discovering Earth's Final Frontier: A U.S. Strategy for Ocean Exploration* (Washington, DC: NOAA, October 10, 2000). 64 pp.

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